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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/718,683	11/24/2003	Francis Pruche	05725.1256-00	3211
22852	7590	12/17/2008		
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413				
EXAMINER				
VENKAT, JYOTHSNA A				
ART UNIT		PAPER NUMBER		
1619				
MAIL DATE		DELIVERY MODE		
12/17/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/718,683

Applicant(s)

PRUCHE ET AL.

Examiner

JYOTHSNA A. VENKAT

Art Unit

1619

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 November 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-57, 66, 68 and 69 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-57, 66, 68 and 69 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(c), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(c) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/12/08 has been entered.

Claims 1-69 are pending in the application. Claims 58-65 and 67 are withdrawn from consideration as being drawn to non-elected invention.

Claims 1-57, 66 and 68-69 are examined in the application.

Applicants are not accorded benefit under 119 (e) since the translated document does not identify the provisional application number filed on 9/5/08. See below for statement from certified translator. There is no document number of provisional application.

RWS Group Ltd, of Europa House, Marsham Way, Gernards Cross, Buckinghamshire, England, hereby declares that, to the best of its knowledge and belief, the following document, prepared by one of its translators competent in the art and conversant with the English and French languages, is a true and correct translation of the accompanying document in the French language.

Applicants are also notified that the certified translated foreign priority document is not proper since the translator does not identify the document. See below for statement from certified translator. There is no document number of foreign priority document .

RWS Group Ltd, of Europa House, Marsham Way, Gerrards Cross, Buckinghamshire, England, hereby declares that, to the best of its knowledge and belief, the following document, prepared by one of its translators competent in the art and conversant with the English and French languages, is a true and correct translation of the accompanying document in the French language.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There are two formulae for the ratios in claims 3-11. The left hand side ratio is not the corrected one since there is no negative charge for the bicarbonate anion. The right hand side is correct since it has negative charge for bicarbonate anion. Additionally the last two lines of claim 3, recite bicarbonate having equal sign instead of negative charge.

Claim Rejections - 35 USC § 103

Claims 1-41, 50-53, 66 and 68-69 are rejected under 35 U.S.C. 103(a) as being obvious over the combination of WO 02/30375 ('375) and 6,736,861('861).

U. S. Patent 6,953,486 is the English equivalent for WO 02/30375. Examiner is relying on the disclosure of the patent.

Patent '486 teaches dyeing compositions also known as coloring compositions for coloring the keratin (skin or hair). See the abstract. Patent '486 teaches coloring using dye precursor at col.3, line 56 to col.4, line 25 and the claimed catalytic system at col.2, line 51 to col.3, line 55. Patent at col.5, ll 36-48 teaches plant extracts claimed in claims 20-21. Patent at col.6, ll 53-68 teaches physiologically acceptable medium claimed in claims 25-28 and teaches the weight percent at col.7, ll 7-11 (claims 29-31). Patent at col.8, ll 23-42 teaches that the composition can be packed in two discrete containers or it can be packed in a single compartment. See the examples and see also claims. The difference between the WO document and instant application is WO document does not teach composition also having an acidic composition or basic composition. However, patent '861 teaches color hair using acidic composition and basic composition. See claim 1 and see col.3, line 10 through col.4, line 41.

Accordingly it would be obvious to one of ordinary skill in the art at the time the invention was made to prepare hair coloring compositions of WO document and add to the compositions an acidic composition and basic composition of patent '881. It is prima facie obvious to combine two compositions which have been used individually for the same purpose since the idea of combining the ingredients flows logically from the art.

Response to Arguments

Applicant's arguments filed 9/5/08 have been fully considered but they are not persuasive.

Applicants argue that U. S. Patent 6,953,486, which is the English equivalent for WO 02/30375 teaches the advantages of their composition not requiring hydrogen peroxide and adding hydrogen peroxide to WO compositions would be proceeding contrary to the teachings of

the reference, therefore claimed composition would not have been obvious over the combination of WO'375 and patent '861 since patent '861 teaches having hydrogen peroxide in acidic compositions.

In response to the above argument, the claims are prima facie obvious over the combination of WO '375 and patent '881 since claim 1 recites that the composition can have either acidic or basic since claim 1 recites "at least one component" in Markush group. WO '375 document teaches at least one coloring agent compositions for coloring keratin and patent '861 teaches basic composition for coloring hair and thus both the references teach compositions individually for coloring keratin material. It is prima facie obvious to combine two compositions which have been used individually for the same purpose since the idea of combining the ingredients flows logically from the art.

Note that Claim 1 does not recite that the composition has both the acidic and basic composition.

Double Patenting

Claims 1-41, 50-53, 66 and 68-69 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-32 of U.S. Patent No. 6,953,486 in view of 6,736,861 ('861). The instant application and the patent are claiming compositions using the same dyeing precursor and also catalytic system. Patent does not claim compositions having acidic composition and basic composition. See the explanation under 103.

Response to Arguments

Applicant's arguments filed 9/5/08 have been fully considered but they are not persuasive.

Applicants argue that patent '486 teaches away from including hydrogen peroxide component as disclosed in patent '881 and for the reasons discussed under 103, the claimed invention would not have been prima facie obvious over the combination of patent '486 in view of patent '861.

In response to the above argument, the claims are prima facie obvious over the combination of patent '486 and patent '881 since claim 1 recites that the composition can have either acidic or basic since claim 1 recites "at least one component" in Markush group. Patent '486 teaches at least one coloring agent compositions for coloring keratin and patent '861 teaches basic composition for coloring hair and thus both the references teach compositions individually for coloring keratin material. Therefore obviousness type double patenting rejection is deemed proper.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTHSNA A. VENKAT whose telephone number is 571-272-0607. The examiner can normally be reached on Monday-Friday, 10:30-7:30:1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JYOTHSNA A VENKAT /
Primary Examiner, Art Unit 1619